IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1246 OF 2005
IN
SUIT NO.756 OF 1984

Jagdish Electronics Plaintiffs

versus

M/s.Welwyn Electronics & anr. Defendants

Mr.R.A.Fernandes for plaintiffs.

Ms.Alpana Ghone i/by Shah & Sanghvi for defendant no.2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd May 2006

PC :

1. Defendant no.2 has instituted this Chamber Summons for condonation of delay in filing the Written Statement.

2. This application is opposed vehemently by the plaintiff and it is pointed out that the present suit is instituted in the year 1984 and the delay in filing the written statement cannot be said to be capable of being condoned. More so, when the application is filed after 22 years of the date

of institution of the suit and an attempt is now made to tender the explanation.

3. Ms.Ghone appearing for defendant no.2 in support invites my attention to paragraph no.2 of the affidavit in support of this Chamber Summons. The Executive Director of defendant no.2 has pointed out that there was a change of Advocate in the year 1996 and the advocate engaged forwarded a draft of the written statement. The said draft was duly approved and the Chairman of defendant no.2 signed the written statement and forwarded it to the defendant no.2's then advocate for filing the same in this Court. This fact is substantiated by a copy of covering letter which forwards the written statement. It is in these circumstances and the lapse on the part of the advocate, that the written statement was not tendered on the record of the suit, although the same was ready in 1997 itself.

4. Although reliance is placed by the learned advocate appearing for the plaintiff on several decisions of Supreme Court so also Order VIII, Rule 1 of CPC, in my view, considering these peculiar facts and the averments in para no.2 of the affidavit in support remaining

uncontroverted, the application made by defendant no.2 deserves to be granted. Ultimately, all procedural provisions are intended to render justice and none should be deprived of an opportunity to contest the matters on merits. However, defendant no.2 will have to pay costs.

5. Accordingly, Chamber Summons is granted in terms of prayer clauses (a) and (b) subject t defendant no.2 paying a sum of Rs.10,000/- (Rs.Ten thousand only) as costs to the plaintiffs. Payment of costs is condition precedent. This order does not prevent the plaintiff from seeking appropriate reliefs including ex-parte decree against defendant no.1.

6. The written statement will be taken on record upon proof of payment of costs is placed on record by defendant no.2 within two weeks from today.

(S.C.DHARMADHIKARI, J.)